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EXEMPTIONS OF CHARITIES FROM TAXATION. — The state as *parens patriæ*, having the general superintendence of all charities, has long patronized them by granting exemptions from taxation.[1] And, if the Dartmouth College Case had not started the custom of regarding grants of privileges as contracts, the argument for allowing the ancient immunities would still be a sufficient explanation and justification of exemptions of charities today; that is, that their purposes redound to the good of the state. From this simple standpoint inquiries as to the presence of consideration or the contractual nature of exemptions, as well as artificial and strained constructions of constitutional and statutory exemptions, would be pointless. For the original exemptions would not be obligations, but favors of the state, and, of course, repealable. In view of possible future reactionary legislatures, repealable charters, though construed down to a minimum, are, it is clear, less desirable than irrepealable charters. But special privileges of exemption should not depend on the sanction of ancient legislatures, mistrusting the future and attempting to deprive it of its prerogatives. Nor has this right, though generally allowed, been adequately justified.[2] A remarkable fact with regard to its very foundation is that at the time of the grant of the Dartmouth College Charter, the king was legally incapable of granting an irrepealable charter.[3]

That the states can make irrevocable contracts of exemption was established by the United States Supreme Court in the face of considerable opposition.[4] And courts generally are subtle in escaping binding obligations,

[1] See 1 Pollock & Maitland, Hist. of Eng. Law, 2 ed., 575.
[2] See Wash. Univ. *v.* Rouse, 8 Wall. (U. S.) 439, 441.
[3] See 6 HARV. L. REV. 161, 179.
[4] 1 Hare, Const. L., 604–605.

holding that to act in reliance upon a general exemption statute by making large expenditures, even at the invitation of the state, is not a contract.[5] For the statute is regarded as a mere allowance of a bounty, not as an offer to a unilateral contract. The deliberate intention of the state to contract, clearly manifested, is rightly made the test.[6] In charters, grants of exemptions are generally held to be contracts. Acceptance,[7] the charitable purposes of incorporation,[8] the gift of property to public uses,[9] etc., are considered as sufficient consideration. In interpreting the meaning and extent of these contract exemptions or of constitutional and statutory provisions granting repealable exemptions, some courts, laboring to minimize the effects of the Dartmouth College Doctrine, by their strict construction defeat the legislative and popular intention. But with reference to the exemption of charitable or educational institutions, there is neither reason nor necessity for an artificial construction of phrases well understood in common usage.[10] When, therefore, the exemption applies to "the college estate," "the land held for the uses and purposes," "property belonging or appertaining to," or "so long as said land belongs to an incorporated institution of learning," the charitable or educational institution should not be taxed when it leases portions of its lands, devoting the rents to its general purposes.[11] Nor should it be taxed when it is lessee instead of lessor.[12] Should its lessee be taxed? There is a supporting analogy when the reversion is in the state.[13] And accordingly in a recent case where the reversion owned by a university was exempt, the United States Supreme Court held that the interest of the lessee is taxable. *Jetton* v. *University of the South*, 208 U. S. 489. There was no attempt made to distinguish between taxing the term and taxing the lessee's improvements: taxation of the latter seems unobjectionable.[14] But as the case stands its economic effect is to diminish the rental value of the lands by the amount of the tax assessed on the term. By the court's interpretation, therefore, the state has conferred the exemption only to destroy it by indirection.

STATE TAXATION ON INTERSTATE COMMERCE. — An important limitation on the taxing power of a state is that provision in the Constitution which gives to the federal government the regulation of interstate commerce. Though a tax in any form may affect such commerce, a sharp distinction is taken between taxes on property and taxes on privileges. The former, in general, have been upheld when no discrimination is made against interstate commerce and when they are not oppressive. Nor does it matter whether the tax is upon the agencies or upon the subject of interstate commerce.

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[5] East Saginaw Mfg. Co. *v.* City, 19 Mich. 259; Salt Co. *v.* East Saginaw, 13 Wall. (U. S) 373. But see Gonzales *v.* Sullivan, 16 Fla. 791.

[6] Newton *v.* Commissioners, 100 U. S. 548.

[7] See Grand Lodge *v.* New Orleans, 166 U. S. 143.

[8] Home of the Friendless *v.* Rouse, 8 Wall. (U. S.) 430.

[9] People *v.* Gass, 104 N. Y. Supp. 643.

[10] Chicago Theological Sem. *v.* People, 193 Ill. 619; Fitterer *v.* Crawford, 157 Mo. 51.

[11] Brown Univ. *v.* Granger, 19 R. I. 704; People *v.* Dohling, 6 N. Y. App. Div. 86; Y. M. C. A. *v.* Keene, 70 N. H. 223; Univ. of the South *v.* Skidmore, 87 Tenn. 155.

[12] Scott *v.* Society, 59 Neb. 571; Humphries *v.* Little Sisters, 29 Oh. St. 201.

[13] *Ex parte* Gaines, 56 Ark. 227; State *v.* Tucker, 38 Neb. 56; State, etc., Co. *v.* Haight, 36 N. J. L. 471. *Cf.* Elder *v.* Wood, 208 U. S. 226.

[14] San Francisco *v.* McGinn, 67 Cal. 110; Parker *v.* Redfield, 10 Conn. 490.